IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.83 OF 2007
IN
WRIT PETITION NO.4388 OF 1995
ALONG WITH
LETTERS PATENT APPEAL NO.84 OF 2007
IN
WRIT PETITION NO.6297 OF 2002

Uday Bojraj Toney
residing at Sudha Niwas, Station
Road, Akkalkot, Dist. Solapur ..Appellant.

Vs.

1. Akkalkot Education Society,
   Akkalkot (Dist. Solapur).

2. C.B. Khedgi's Science,
   Raja Vijaysinha Commerce & Raja
   Jaisinha Arts College,
   Akkalkot (Dist. Solapur)

3. State of Maharashtra ..Respondents.

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Mr. A.N. Mulla for the Appellant.

Mr. S.M. Sabrad for Respondents 1 and 2.

Mr. V.P. Malwankar, AGP for Respondent No.3.

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CORAM : **SWATANTER KUMAR, C.J. &**
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on 27th August, 2007.
Judgment pronounced on 27th September, 2007.

JUDGMENT (Per Dr. D.Y. Chandrachud , J.) :

1. The Appellant was appointed as a teacher for physical education by the Respondents between 4th July, 1988 and 22nd April, 1989 on a clock hour basis. The case of the Appellant is that he continued to work during the period between 1st July, 1989 and 22nd April, 1990. During the period 26th June, 1990 and 19th June, 1991 the Appellant claims to have been engaged as a part time employee. Thereafter for the period between 20th June, 1991 and 19th June, 1992 he was stated to be recognized as a full time employee – a capacity on which the Appellant claims to have worked between 1st August, 1992 till 20th June, 1993 and 21st June, 1993 until 17th September, 1993. The Appellant at the material time held the B.A. and BP Ed. qualifications. On 18th September, 1993 the services of the Appellant were stated to have been orally terminated. The case of the Appellant is that in 1991 he had contested municipal elections in which he defeated the chairman of the management of the Respondent and the order of termination was as a result of the grudge borne by the chairman towards the Appellant. The Appellant preferred an appeal before the School Tribunal and an ad interim order was passed staying the

termination. The management moved this Court in a petition under Article 227 in which the order of the School Tribunal was stayed. The case of the Appellant is that the management thereafter allowed him to continue in service for one year between 11th June, 1994 and 31st January, 1995 and thereafter between 31st January, 1995 until 25th July, 1995. An advertisement was issued by the management calling for applications inter alia for the post of physical education teacher. On 25th July, 1995 the services of the Appellant were terminated by an order of oral termination. The teacher appointed in the post of the Appellant between 1995 and 1998 was stated to have been terminated from service. In 1998 an advertisement was issued by the management once again in pursuance of which the Appellant was appointed. In August 1999 the services of the Appellant were alleged to have been terminated after he had rendered 14 months of service.

2. The appeal preferred by the Appellant for challenging the initial order of termination was dismissed by the School Tribunal on 31st January, 1995. The challenge to the order of termination passed in August 1999 was dismissed by the School Tribunal on 8th August, 2002. Writ Petition 4388 of 1995 was instituted by the

Appellant for challenging the order of the School Tribunal dated 31st January, 1995. Writ Petition 6297 of 2002 was instituted by the Appellant to challenge the order of termination dated 8th August, 2002. The Writ Petitions were taken up for hearing together and were dismissed by an order of the Learned Single Judge dated 11th January, 2007 which is impugned in these proceedings.

3. The School Tribunal came to the conclusion that the Appellant was not eligible for appointment as a physical education teacher on the ground that he did not satisfy the criteria laid down in a Government Resolution dated 25th January, 1990. The contention of the Appellant was that the qualifications that were prescribed under the rules framed in pursuance of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 would prevail over executive instructions. The second ground which weighed with the School Tribunal was that the appointment of the Appellant was against a post reserved for a backward class candidate and hence his appointment was temporary. The Learned Single Judge held that it was not necessary to address the wider question raised in regard to the

competence of the State Government to prescribe the eligibility criteria at variance with what was laid down in the rules, since in any event it was found that the Appellant had been appointed only on a temporary basis and upon the expiry of the term of appointment, his services had come to an end. The School Tribunal had placed reliance on the appointment order which mentioned that the post being reserved; the appointment of the Appellant who was an open category candidate was not on a permanent basis. The contention of the Appellant was that no order of appointment was issued to him for the academic sessions 1991-92 and 1993-94. The Learned Single Judge noted that neither before the School Tribunal nor in the writ petition before this Court was there any averment to the effect that the Appellant was not issued with any order of appointment. In these circumstances, the finding of fact arrived at by the Tribunal about the appointment of the Appellant against a reserved post was in the view of the Learned Single Judge not required to be interfered with.

4. Insofar as the second appointment is concerned, the Learned Single Judge noted that once again the Appellant was given an appointment for one academic session – 1998-99, and

thereafter his services came to be terminated. In this view of the matter, the writ petitions were dismissed. On behalf of the Appellant it has been sought to be urged that the appointment of the Appellant was not against a reserved post and that as a matter of fact no appointment orders were issued to him. The Learned Single Judge has held that as a matter of fact it would appear that the management had produced the orders of appointment before the Tribunal. Moreover, neither before the School Tribunal nor before the Learned Single Judge was such a case made out by the Appellant on the pleadings. At this stage, it would be necessary to note that the Assistant Director in the office of the Deputy Director of Education has filed an affidavit stating that the Appellant was appointed as an untrained physical teacher on clock hour basis during 1988-90. During the period 1990-91 he was appointed as a part-time physical education teacher while between 1991-93 he was appointed on a full time basis. Though no reservation was applicable to appointments on clock hour and part-time basis, reservations were applicable to the post of a full time teacher. Since the Appellant was an open category candidate, his appointment to the post of full time teacher was made only for a single academic year against a reserved post. Moreover, it has

been submitted that the roster maintained by the Respondent makes it clear that the post of full time teacher was reserved for scheduled tribes candidates. The affidavit of the Assistant Director has placed on record the orders of appointment dated 2nd July, 1988, 6th July, 1989, 12th July, 1990, 27th March, 1992 and 1st August, 1992 on the record. The first two orders of appointment revealed that the appointment was on a temporary basis while the third appointment was on a clock hour basis. The orders of appointment dated 27th March, 1992 and 1st August, 1992 are on a full time basis, but it is clarified that the appointment was being made against a reserved post and the Appellant would have no right to claim the post if a backward class candidate was made available. The management has in its reply dated 2nd August, 1997 also placed on the record the letters of appointment. A copy of the list of documents filed before the Presiding Officer of the School Tribunal has also been annexed, which shows that the letters of appointment dated 27th March, 1992 and 1st August, 1992 were placed on the record.

5. The Appellant has questioned the validity of the claim of the management that the post was a reserved post and that the

letter of appointment was served on him. We are of the view that it would neither be appropriate nor proper for this Court to interfere with the finding of fact recorded by the School Tribunal and confirmed by the Learned Single Judge while disposing of the Writ Petition. The Appellant was appointed purely on a temporary basis and his services were brought to an end upon the expiry of the period of appointment. The order of the Learned Single Judge cannot be faulted for affirming the finding of fact arrived at by the School Tribunal that the Appellant was appointed on a year to year basis, for a temporary duration and cannot be deemed to have been appointed on probation. The dispute as to whether the appointment orders were in fact served on the Appellant or not, is a dispute on a question of fact. In the absence of cogent pleadings and evidence on the part of the Appellant, it would not be appropriate for this Court in appeal to substitute its own view for the finding arrived at by the School Tribunal and confirmed by the Learned Single Judge. We, therefore, do not find any merit in the appeals which shall accordingly stand dismissed.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.